

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE
BENDCO, INC.
DEBTOR

§ CASE NO. 18-30849
§ CHAPTER 11
§

**AGREED ORDER ACCEPTING EXECUTORY CONTRACT
AND CONDITIONING AUTOMATIC STAY**
(Responsive to Docket No. 46)

At Houston, in said District, came on for consideration the Motion for Relief from the Automatic Stay filed by OMNIPOTECH, LTD (“OMNIPOTECH”). OMNIPOTECH and Debtor Bendco, Inc. (“Bendco”) have advised the Court that they have reached an agreement for adequate protection, acceptance of the executory contract and have conditioned the automatic stay. In connection therewith, OMNIPOTECH and Bendco submit to the Court the following stipulations:

1. On July 27, 2015, Bendco and OMNIPOTECH entered into the following contracts: 1) On Premises Infrastructure Project and Services Order Form (“Infrastructure Services Order Form”), 2) Project and Services Order Form for Bendco (“Services Order Form”), and 3) Masters Services Agreement for Bendco (“MSA”) (Hereinafter the Infrastructure Services Order Form, the Services Order Form, and the MSA are collectively referred to as the “Contracts”). Under the Contracts, OMNIPOTECH sold certain equipment to Bendco and provides monthly services to Bendco including, but not limited to email, data backup and phone services.

2. OMNIPOTECH holds a purchase money security interest in the following personal property:

1 Netgear GS748TP 48 pt GM Smart Switch
1 Dell T430 server with 5YR 24x7 Warranty, 4x1TB SSD drives with hot spare and Vmware Vsphere Essentials kit
1 Eaton PW9130L1500-T-XL Tower UPS 120 V NEMA 5-15
15 Polycom VX410 PoE speaker phone with power adapter
1 Polycom VVX Color Expansion Module

as more particularly described in the Infrastructure Services Order Form.

2. Bendco is also in possession of certain equipment that belongs to OMNIPOTECH that Bendco uses in connection with its infrastructure needs. These pieces of equipment consist of:

1 OMNIPOTECH Backup Appliance
 Phone System Server
 Super Micro Phone server hardware

These pieces remain property of OMNIPOTECH pursuant to the Services Order Form.

3. The Contracts grants Bendco a non-exclusive licence to use OMNIPOTECH's technology solely for the purposes of using the services provided under the Contracts.

4. Bendco is required to make monthly payments for the services under the Contracts, but was in default at the time Bendco filed bankruptcy.

5. Bendco requested a reduction in certain services as a modification of the Contracts.

6. OMNIPOTECH and Bendco reached an Agreement regarding cure of the defaults under the Contracts, modification of the Contracts and conditioning the automatic stay as follows:

- i. Bendco shall enter into a Promissory note to pay the pre-petition and post petition arrearages under the Contracts. The Promissory Note shall be in the amount of \$96,755.84 being over 60 months at 5% interest. The monthly payments are in the \$1825.90 with the first payment being due on or before July 21, 2018 and continuing on the 21st day of each month until all sums are paid in full. The note shall be secured by the equipment listed in Paragraph 1 above. OMNIPOTECH will be allowed to file any further UCC-1's to secure the Promissory Note by such equipment.
- ii. The existing Contracts will have an addendum added for monthly services listed below being the only services provided:

Monthly Recurring Services	Qty	Amt	Total
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USER WITH TERMINAL SERVER ACCESS

- Microsoft Windows Server Standard R2 SPLA SAL

- Microsoft Remote Desktop Services SPLA SAL				
- Microsoft Office Standard SAL (Word, Excel, PowerPoint & Outlook)	8	58.95		471.60
- Microsoft Exchange Standard				
- Microsoft SQL Server SAL (Required for JobBoss)				

PROACTIVE MAINTENANCE AND SECURITY

OMNI-Desktop Care for Windows-based desktops and laptops	5	20.00	100.00
OMNI-Managed Security per user - manage anti-virus, anti-malware, anti-spyware and URL filtering per device	5	5.00	25.00
OMNI-Server Care Remote Server Watch for Windows-based servers	3	59.00	177.00
OMNI-Managed Security Server - manage anti-virus, anti-malware, anti-spyware and URL filtering	3	20.00	60.00
OMNI-Firewall Monitoring (free with combined OMNI-Care Desktop & Server services)	2	Included	Included

EMAIL SECURITY

OMNI-Email Security Services for Exchange Server with secure outbound relay			
- 1 mailbox per Exchange mailbox with up to 2 aliases; i.e., cgarcia, carlos.garcia, etc.			
- 1 distribution list (up to 2 aliases each)			
- Individual spam filtering, antivirus and antimalware for email	11	6.50	71.50
- 60 days rolling email retention for email continuity and online access			
- Secure outbound relay to prevent Exchange server blacklisting			

BACKUP, BUSINESS CONTINUITY, AND OFFSITE DISASTER RECOVERY

OMNI-Backup Appliance for physical or virtual servers and up to 4 host servers protected	1	375.00	375.00
- No storage commitment required. Invoiced at \$1/Gb for total data stored offsite			
OMNI-Backup license per non-SBS server with ImageManager Intelligent Transfer & HSR	3	75.25	225.75

OTHER HOSTING SERVICES

OMNI-Shared Hosting for Websites (Hosting for up to one static, non-database driven website)	1	Included
		Included

OMNI-DNS Services (Hosting for all domain names)	1	Included	Included
- bendco.com			

OMNI-PBX (PBX-AS-A-SERVICE)

- One On-Premises Phone System with Datacenter Failover to Hosted PBX
- Datacenter PBX located in SSAE16 datacenter
- Datacenter failover system on dedicated virtual phone system on clustered servers
- Datacenter Bandwidth dedicated to VoIP traffic
- Client owns Polycom handsets and OMNIPOTECH owns the phone system servers
- Client pays telecom provider directly for phone lines and internet

OMNI-PBX Extensions (any Polycom, virtual cell phones, softphones, etc.) - estimated quantity	1	221	221.00
	13	4.00	52.00

REMEDIATION

Per Rate Schedule Agreement on Page 10 of the Contract

MONTHLY TOTALS 1778.85

Bendco shall pay base amount of \$1,778.85 each month plus applicable sales tax and adjusted for actual usage each the month. The first payment is due on or before July 10, 2018. Remediation will be billed according to the Rate Schedule Agreement located on page 10 of the original order form.

iii. OMNIPOTECH may purge the offsite data backup held in OMNIPOTECH'S data center on June 29, 2018;

iv. BENDCO shall sign a waiver containing the following representation:

Bendco consents to the removal of the data backup held in OMNIPOTECH's data center and acknowledges the possible consequences of the removal of the offsite data backup held in OMNIPOTECH'S data center. Bendco understands that the offsite disaster recovery option is an additional layer of protection in the event the OMNI-Backup Appliance located at Bendco's office fails. Bendco acknowledges that purging the offsite data backup cannot be reversed and the data will not be

recoverable by any means. Bendco understands that the only backup protection will be contained within Bendco's offices and stored on the OMNI-Backup Appliance. Bendco acknowledges that if the OMNI-Backup Appliance hardware fails, the data is compromised or its data is irretrievable for any reason, OMNIPOTECH may not be able to restore one or more of its virtual servers; meaning, that Bendco may experience data lost. Bendco acknowledges and accepts this risk. Bendco further acknowledges that it will have the option to resume the offsite data backup at OMNIPOTECH's rate at the time of request, but if requested, the monthly payments as set forth in Paragraph 7(ii) above will be to the existing monthly amount.

- v. In the event of default under the Promissory Note and/or the monthly services payment, Omnipotech shall give Bendco a twenty day notice of such default and opportunity to cure the default. If Bendco remains in default or defaults a second time then the automatic stay will lift automatically and OMNIPOTECH may immediately cancel the services without the need of further order of the Court.
- vi. Bendco accepts the current Contracts with as amended by the modifications in Paragraph 7(ii) above. All other provisions of the Contracts will remain in full force and effect.

The Court, having reviewed the foregoing stipulations and the parties' agreement, finds that the parties' agreement is reasonable and appropriate, no objections have been filed. Proper notice of the Motion has been given to all parties in interest and the provisions of the Agreed Order are in accordance with the United States Bankruptcy Code. It is accordingly,

ORDERED that the automatic stay provided by 11 U.S.C. § 362 shall remain in effect as to the Property provided that Debtor Bendco complies fully with the terms of this Order. It is further

ORDERED that the Contracts as defined in Paragraph 1 are accepted by Bendco and remain in full force and effect with the exception of the modification in the terms set forth in Paragraph 7(ii) above. It is further

ORDERED that Debtor is authorized to enter into the Promissory Note for the cure of the pre-petition and post petition arrearages in the amount of \$96,755.84 over 60 months at 5% interest with the first payment being July 21, 2018. It is further

ORDERED that OMNIPOTECH may file a UCC-1 to secure the purchase money security interest on the equipment listed in Paragraph 1 above. It is further

ORDERED that the Contracts will be amended by the terms listed in Paragraph 7(ii) above. It is further

ORDERED that based upon the modification of the Contracts in Paragraph 7(ii) above, Bendco shall pay to OMNIPOTECH a base of \$1,778.85 plus sales tax, and adjusted for actual usage each month beginning on July 10, 2018. It is further

ORDERED that all remediation will be charged to Bendco at the rates provided for in the Contracts; It is further

ORDERED that the offsite data backup held in OMNIPOTECH's data center may be purchased on June 29, 2018 to reduce the monthly services costs as modified in Paragraph 7(ii) above. It is further

ORDERED that Bendco shall enter into a waiver acknowledging that it understands the risk of cancelling the offsite data backup currently held in OMNIPOTECH's data center. It is further

ORDERED that if Bendco defaults under the Promissory Note and/or in the monthly service payments, Omnipotech shall give Bendco a twenty (20) day written notice of such default with opportunity to cure. If Bendco fails to cure within the twenty (20) day period, then the automatic stay shall lift and OMNIPOTECH may take any further action to cancel the services being provided without the necessity of further Court Order and to repossess its collateral; It is further

ORDERED that Notice to Bendco and Bendco's counsel as provided in this Order shall be sent by email and by certified mail, return receipt requested, to the address listed below or such additional addresses as Bendco may designate in writing by email and certified mail, return receipt requested to OMNIPOTECH and its counsel:

BENDCO

John Tharp
Bendco, Inc.
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BENDCO'S COUNSEL

Richard L. Fuqua, II
Fuqua & Associates, P.C.
5005 Riverway, Suite 250
Houston, Texas 77056
email: ruqua@fuqualegal.com

Notice to OMNIPOTECH and OMNIPOTECH's counsel as provided in this Order shall be sent by email and by certified mail, return receipt requested, to the address listed below or such additional addresses as OMNIPOTECH may designate in writing by email and certified mail, return receipt requested to OMNIPOTECH and its counsel:

OMNIPOTECH

Robert Kyslinger
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OMNIPOTECH'S COUNSEL

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SIGNED this ____ day of _____, 2015.

DAVID JONES
UNITED STATES BANKRUPTCY JUDGE

AGREED:

LAW OFFICE OF MYNDE S. EISEN, P.C.

By: /s/ Mynde S. Eisen
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